

**Craig A. Hoggan (8202)**  
**Joelle S. Kesler (11213)**  
**Jonathan W. Gold (15143)**  
**DART ADAMSON & DONOVAN**  
257 East 200 South, Suite 1050  
Salt Lake City, Utah 84111  
Telephone: (801) 521-6383  
**Attorneys for Plaintiff AH Aero Service, LLC dba OK3 AIR (“OK3 AIR”)**  
[choggan@dadlaw.net](mailto:choggan@dadlaw.net)  
[jkesler@dadlaw.net](mailto:jkesler@dadlaw.net)  
[jgold@dadlaw.net](mailto:jgold@dadlaw.net)

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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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<p>AH Aero Service, LLC dba OK3 AIR,</p> <p>Plaintiff,</p> <p>v.</p> <p>Heber City, a municipal corporation; Paul Boyer, an individual, in his individual and official capacity; and Denis Godfrey, an individual, in his individual and official capacity,</p> <p>Defendant.</p>	<p><b>MOTION FOR LEAVE TO FILE EXHIBITS TO DEFENDANT PAUL BOYER’S MOTION FOR SUMMARY JUDGMENT (<a href="#">DKT NO. 169</a>) UNDER SEAL</b></p> <p>Civil No. 2:17-CV-01118-TC</p> <p>Judge Howard C. Nielsen Jr. Magistrate Judge Daphne A. Oberg</p>
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Under DUCivR 5-3(b)(2)(C), Plaintiff AH Aero Service, LLC dba OK3 AIR (“OK3 AIR”) hereby moves for leave to file Exhibits W and AA to Defendant Paul Boyer’s (“Boyer”) Motion for Summary Judgment ([Dkt No. 169](#)) under seal.

A party seeking to file a document under seal (or keep the document under seal) must file a motion specifying “why the Document is privileged, protectable as trade secret, or otherwise entitled to protection under the law.” DUCivR 5-3(b)(2). The motion must:

(A) be narrowly tailored to seek protection of only the specific information that the party alleges is truly deserving of protection; and

(B) state the duration of the seal; and

(C) state the statute, rule, case law, or reason supporting the sealing of the Document . . . .

*Id.* Where the sole reason for a party's motion is that another party has designated a document as "confidential" or "attorneys' eyes only," the party must state this. *Id.* at R. 5-3(b)(2)(C)(i). If the designating party seeks to keep the document under seal, it must file a motion in accordance with the above rules within seven days of service of the other party's motion. *Id.*

In his Motion to File Supporting Exhibits Under Seal ([Dkt No. 170](#)), Boyer moved to file Exhibits W, AA, and BB to his Motion for Summary Judgment ([Dkt No. 169](#)) under seal because OK3 AIR designated these documents, or portions thereof, as "Confidential" or "Attorneys' Eyes Only" pursuant to the Standard Protective Order. OK3 AIR has no objection to filing Exhibit BB publicly. As explained below, OK3 AIR moves for leave to keep portions of Exhibit W and AA under seal.

#### **A. Exhibit W**

Exhibit W contains portions of the deposition transcript of Alan Robertson, OK3 AIR's CFO. OK3 AIR designated page 217 of the deposition, and a portion of page 218, as "Attorneys' Eyes Only" because these pages discuss OK3 AIR's internal processes for determining its fuel prices. OK3 AIR appropriately designated this information as "Attorneys' Eyes Only;" its internal process for determining its fuel prices and fuel margins is competitive, sensitive, and confidential business information that is protected by OK3 AIR and which should not be disclosed to the public or to OK3 AIR's competitors. Standard Protective Order, ¶ 2(b)(4). Accordingly, this information should remain under seal indefinitely.

OK3 AIR's request to keep this information under seal is narrowly tailored because OK3 AIR merely seeks to keep sensitive information concerning its fuel prices under seal and does not

seek to keep any other portion of Exhibit W under seal. Except for the redacted portions of pages 217 and 218, the remainder of Exhibit W can be filed publicly.

#### **B. Exhibit AA**

Exhibit AA is a copy of the expert report prepared by Jeff Kohlman, one of OK3 AIR's retained experts in this case. Portions of this document must remain under seal because they contain (1) competitive and confidential information regarding OK3 AIR's finances which inform Mr. Kohlman's opinions regarding OK3 AIR's value and impact to that value and (2) confidential information regarding other transactions that Mr. Kohlman relied upon in reaching his opinions in this case. *See* Standard Protective Order, ¶ 2(b)(2), 2(b)(4). OK3 AIR properly designated this information as "Attorneys' Eyes Only" and it should remain under seal indefinitely.

Previously, OK3 AIR marked Mr. Kohlman's entire report as "Attorneys' Eyes Only." To narrowly tailor this motion, however, OK3 AIR has redacted only those portions of the report that are "truly deserving of protection." DUCivR 5-3(b)(2)(A). The Court should keep the redacted portions of the report under seal. The remaining portions of the report can be filed publicly.

#### **Conclusion**

For the above reasons, OK3 AIR respectfully asks the Court for leave to file Exhibits W and AA to Boyer's Motion for Summary Judgment under seal. Consistent with DUCivR 5-3(1), OK3 AIR has filed this motion and redacted versions of the proposed sealed documents as separate docket entries. OK3 AIR has also served the Court and the other parties with highlighted versions of the exhibits, which highlight the specific portions of Exhibits W and AA that OK3 AIR seeks to file under seal.

**DATED** this 17<sup>th</sup> day of September, 2020.

**DART ADAMSON & DONOVAN**

/s/ Joelle S. Kesler

Craig A. Hoggan

Joelle S. Kesler

Jonathan W. Gold

Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was served on September 17, 2020 via electronic mail on the following:

J. Mark Smedley  
90 W 200 S STE 4  
HEBER CITY, UT 84032  
(801)654-4600  
Email: [msmedley@ci.heber.ut.us](mailto:msmedley@ci.heber.ut.us)

Peter J. Kirsch  
W. Eric Pilsk  
Steven L. Osit  
KAPLAN KIRSCH & ROCKWELL LLP  
1675 BROADWAY STE 2300  
DENVER, CO 80202  
(303)825-7000  
Email: [pkirsch@kaplankirsch.com](mailto:pkirsch@kaplankirsch.com)  
[epilsk@kaplankirsch.com](mailto:epilsk@kaplankirsch.com)  
[sosit@kaplankirsch.com](mailto:sosit@kaplankirsch.com)

Joseph E. Wrona  
Cade Whitney  
WRONA DUBOIS PLLC  
1745 SIDEWINDER DR  
PARK CITY, UT 84060  
(435) 649-2525  
Email: [wrona@wdlawfirm.com](mailto:wrona@wdlawfirm.com)  
[whitney@wdlawfirm.com](mailto:whitney@wdlawfirm.com)

/s/ Robyn Van Shaar